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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/830,040	08/13/2001	Christopher Robert Eccles	13121US01	9447

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Lawrence M Jarvis
McAndrews Held & Malloy
500 W Madison Suite 3400
Chicago, IL 60661

EXAMINER

PALABRICA, RICARDO J

ART UNIT PAPER NUMBER

3641

DATE MAILED: 02/25/2002

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

09/830,040

Applicant(s)

ECCLES, CHRISTOPHER
ROBERT

Examiner

Rick Palabrica

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 1 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☐ Responsive to communication(s) filed on ____.
- 2a) ☐ This action is FINAL. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-35 is/are pending in the application.
- 4a) Of the above claim(s) ____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) ____ is/are allowed.
- 6) ☐ Claim(s) ____ is/are rejected.
- 7) ☐ Claim(s) ____ is/are objected to.
- 8) ☒ Claim(s) 1-35 are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on ____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) ☐ The proposed drawing correction filed on ____ is: a) ☐ approved b) ☐ disapproved by the Examiner.
- If approved, corrected drawings are required in reply to this Office action.
- 12) ☐ The oath or declaration is objected to by the Examiner.

Priority under 35 U.S.C. §§ 119 and 120

- 13) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. ____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.
- 14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).
- a) ☐ The translation of the foreign language provisional application has been received.
- 15) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

Attachment(s)

- 1) ☐ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449) Paper No(s) ____.
- 4) ☐ Interview Summary (PTO-413) Paper No(s) ____.
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other:

DETAILED ACTION

Election/Restrictions

1. This application was filed under 35 U.S.C. 371 and the unity of invention requirement applies.

There is lack of unity PCT Rule 13 because there is no "special technical feature" common to all the Groups that defines the contribution which each of the inventions makes over the prior art. In the present case, there is no "special technical feature" because the general inventive concept set forth, for example, in claims such as claim 33, does not define over the teachings of the prior art set forth, for example, in U.S. Patent 4,880,506 to Ackerman et al.

2. Restriction to one of the following inventions is required under 35 U.S.C. 121:
 - Group IA, claims 1-4 and 6-32, drawn to a **process** of releasing energy by a plasma discharge generated by a voltage from 50 to 20,000 volts.
 - Group IB, claims 1-3 and 5-32, drawn to a **process** of releasing energy by a plasma discharge generated by a voltage greater than 20,000 volts (see specification on page 2, 2nd full paragraph).
 - Group IIA, claims 33-35, drawn to an **apparatus** with an electrolyte capable of initiating transitions of hydrogen atoms.
 - Group IIB, claims 33-35, drawn to an **apparatus** with an electrolyte capable of initiating transitions of deuterium atoms.
 - Group IIC, claims 33-35, drawn to an **apparatus** with an electrolyte capable of initiating transitions of hydrogen and deuterium atoms.

3. If either Group IA or IB is elected, applicant is further required under 35 U.S.C. 121 to elect one of the following disclosed species for prosecution on the merits to which the claims shall be restricted if no generic claim is finally held to be allowable (currently, claim 1 is generic)

- Ic: Wherein the cathode electrode is comprised of a single material (see claim 22).
- Id: Wherein the cathode electrode is comprised of a sheath of nickel foil wrapped on a substrate (see claim 23).

4. If embodiment Ic is elected, applicant is further required under 35 U.S.C. 121 to elect a single species of the electrode material, for purposes of examination. This additional requirement is to facilitate examining due to the diverse materials disclosed as suitable (e.g., see claim 22).

5. If embodiment Id is elected, applicant is further required under 35 U.S.C. 121 to elect a single species of the substrate material, for purposes of examination. This additional requirement is to facilitate examining due to the diverse materials disclosed as suitable (e.g., see claim 23).

6. If either Group IA or IB is elected, applicant is further required under 35 U.S.C. 121 to elect a single species of the product of metal hydride dissociation, for purposes

of examination. This additional requirement is to facilitate examining due to the diverse products disclosed as suitable (e.g., see claims 10 and 11).

7. If either Group IA or IB is elected, applicant is further required under 35 U.S.C. 121 to elect a single species of the anode material, for purposes of examination. This additional requirement is to facilitate examining due to the diverse materials disclosed as suitable (e.g., see claim 25).

8. If either Group IA or IB is elected, applicant is further required under 35 U.S.C. 121 to elect a single species of the electrolyte, for purposes of examination. This additional requirement is to facilitate examining due to the diverse electrolytes disclosed as suitable (e.g., see claim 28).

9. If either Group IA or IB is elected, applicant is further required under 35 U.S.C. 121 to a elect single species of the reactive ingredient of the electrolyte that is consumed, for purposes of examination. This additional requirement is to facilitate examining due to the diverse reactive ingredients disclosed as suitable (e.g., see claim 29).

10. If either Group IA or IB is elected, applicant is further required under 35 U.S.C. 121 to elect a single species of the fusion pathway, for purposes of examination. This

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additional requirement is to facilitate examining due to the diverse pathways disclosed as suitable (e.g., see claim 32).

11. If either Group IIA or IIB or IIC is elected, applicant is further required under 35 U.S.C. 121 to elect one of the following disclosed species for prosecution on the merits to which the claims shall be restricted if no generic claim is finally held to be allowable (currently, claim 33 is generic)

- IId: Wherein the converging means is in the form of a funnel (see claim 35).
- IIe Wherein the converging means is in the form of a nozzle (see claim 35).

12. Applicant is advised that the reply to the election of invention requirement to be complete must include the invention elected to be examined even though the requirement be traversed (37 CFR 1.143).

Applicant is advised that a reply to the election of species requirement must include an identification of the species that is elected consonant with this requirement, and a listing of all claims readable thereon, including any claims subsequently added. An argument that a claim is allowable or that all claims are generic is considered nonresponsive unless accompanied by an election.

Upon the allowance of a generic claim, applicant will be entitled to consideration of claims to additional species which are written in dependent form or otherwise include all the limitations of an allowed generic claim as provided by 37 CFR 1.141. If claims

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are added after the election, applicant must indicate which are readable upon the elected species. MPEP § 809.02(a).

Should applicant traverse on the ground that the species are not patentably distinct, applicant should submit evidence or identify such evidence now of record showing the species to be obvious variants or clearly admit on the record that this is the case. In either instance, if the examiner finds one of the inventions unpatentable over the prior art, the evidence or admission may be used in a rejection under 35 U.S.C. 103(a) of the other invention.

Conclusion

13. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Rick Palabrica whose telephone number is 703-306-5756. The examiner can normally be reached on 8:00-4:30, Mon-Fri.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Michael Carone can be reached on 703-306-4198. The fax phone numbers for the organization where this application or proceeding is assigned are 703-305-0285 for regular communications and 703-305-0285 for After Final communications.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist, telephone number is 703-308-1113.

RJP
February 21, 2002


MICHAEL J. CARONE
SUPERVISORY PATENT EXAMINER